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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,541

02/17/2004

Kenneth Gillespie

10843

7467

7590

08/11/2006

National IP Rights Center, LLC
Suite 400
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EXAMINER

GART, MATTHEW S

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/780,541	Applicant(s) GILLESPIE, KENNETH	
	Examiner Matthew S. Gart	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-2 are rejected under 35 U.S.C. 101.

Referring to claims 1-2. Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute "descriptive material." Abstract ideas, Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the

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medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. The “control unit” of claim 1 is unclear and for purpose of examination is construed as software, therefore the claim is merely directed to a computer program per se.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph.

Referring to claims 1-2. Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 recites "a control unit," however the specification as original provided does not enable a person skilled in the art to make and use the claimed "control unit."

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph.

Referring to claims 1-6. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-6 recite "a high value property," however the scope of the term "high value" is unclear. The specification as originally filed lacks a standard for measuring the degree of property value.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Whittet (U.S. Patent Application Publication 2004/0054605 A1).

Referring to claim 1. Whittet discloses an apparatus for managing the purchase and sale by a broker of a high value piece of property comprising:

- A control unit (Whittet: at least Fig. 1, “Web Site Server **112**”) for inputting information by a broker (Whittet: at least Fig. 3e, “Member Type: Broker/Agent”) related to a high value property item and for posting information about the property (Whittet: at least Fig. 3f, “Click here to Add new listing **302**”); and
- Publishing the information to at least one buyer (Whittet: at least Fig. 3q, “How do you want your listing published?”).

Referring to claim 2. Whittet further discloses an apparatus comprising means for downloading advertising related to identity of other high value properties (Whittet: at least Fig. 4b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whittet (U.S. Patent Application Publication 2004/0054605 A1) in view of Zakaria (U.S. Patent Application Publication 2002/0184135).

Referring to claim 3. Whittet discloses an apparatus for managing the transaction between a broker and a seller of a high value property comprising:

- Program means for identifying a plurality of high value properties and their sellers (Whittet: at least Fig. 4b);
- A control unit (Whittet: at least Fig. 1, "Web Site Server 112") for inputting listing information about at least one high value property to be sold and determining whether the high value property is to be placed for sale on within a larger network of brokers (Whittet: at least Fig. 3q, "How do you want your listing published?"); and
- Means for publishing the listing to third parties at the asking price (Whittet: at least paragraph 0272, "FIG. 6g is a flowchart of the operation in which website server 112 publishes listings in a manner that permits viewing by all "member type" classes of users through the Internet via one or more non-MagicLamp Internet sites of other advertisers.").

Whittet does not expressly disclose an apparatus for managing the transaction between a broker and a seller of a high value property comprising: means for assisting the seller in formulating an asking price for the at least one high value property. Zakaria discloses an apparatus for managing the transaction between a broker and a seller of a high value property comprising: means for assisting the seller in formulating an asking price for the at least one high value property (Zakaria: paragraph 0031). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the method and system of Whittet to have included the limitations of Zakaria in order to streamline the sale and purchase price of the property to the property's true value price (Zakaria: paragraph 0005).

Referring to claim 4. Whittet further discloses an apparatus comprising means for uploading ads relating to a plurality of high value properties which may be listed onto the apparatus (Whittet: at least Fig. 4b).

Referring to claim 5. The limitations of claim 5 closely parallel those of claim 3. Claim 5 is rejected under the same rationale as set forth above in claim 3.

Referring to claim 6. The limitations of claim 6 closely parallel those of claim 4. Claim 6 is rejected under the same rationale as set forth above in claim 4.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S. Gart whose telephone number is 571-273-3955. The examiner can normally be reached on M-F, 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MSG
Primary Examiner
August 6, 2006